

1859-009 Chancery Causes: Charles H. Havelly vs. John Horton &
Lee Co.

Caldwell, Hamblen, Mills, Johnston

CA-Debt

To the worshipful County Court of Lee County in Chancery
sitting, the bill of complaint of Charles N. Haseley res-
pectfully represents: That about the year 18 your
orator became indebted to James Caldwell in the sum
of near \$135.00, (perhaps a ^{little} ~~few cents~~ more) and executed
his note therefor, payable to the said Caldwell, in cabinet
or carpenter's work, both of which kinds of work your ora-
tor is accustomed to do, particularly the ^{former} ~~latter~~, as he is
indeed a cabinet maker; which mode of payment
was expressed in the said note. Your orator went on
to make payments in discharge of the said note, so
far that the greater part was paid, and only ~~about~~
the sum of \$36.14 remained unpaid. By ^{much and} careless hand-
ling, the said note had become so worn out and covered
with credits, that it was at length agreed upon by
the said Caldwell and your orator, that the said note
should be delivered to your orator and that he should
execute a new note therefor. They ^{about the 20th February 1832} accordingly procured
Alexander W. Mills to ascertain by calculation what
was due, for which he was requested to write
a new note; he did write one, but your orator objected
to signing it, because it was simply a note for so ^{much} ~~many~~
^{money} ~~dollars~~ and did not mention the manner in which it
was payable, ~~being~~ which should have been in such
work as was specified in the first note, that being the
contract between the parties. Caldwell admitted that
such was the contract, and your orator was induced, by
the said Mills being called upon to witness & recollect
that condition of the contract, to execute the note as
written, merely for so ^{much money} ~~many dollars~~. Your orator was
<sup>one or two of the fragments of the old note are still in your orator's possession, but nothing can be made out of them
except a part of the words "cabinet work".</sup> very soon thereafter ready to pay the said last mentioned
note according to contract, having an abundant stock of
cabinet ware on hand, and never calculated upon
being required to pay it in any other manner. However
in the month of March 1832, the said note was presented
to him by John Horton, ^{to whom it had been transferred by the said Caldwell} of this County, who demanded
payment in money; this your orator refused to do, ~~but~~
as he well might, and tendered to him the furniture

according to his agreement with Caldwell. Horton refused to receive cabinet furniture for it, saying it was for money, and he would have nothing else - Your orator continued to refuse to pay in any other manner than was his contract, and Horton immediately brought suit against him in this Court, on the common law side thereof. Soon after the service of the writ upon your orator, he spoke to an attorney to appear in the case and defend it, being advised that upon his defence against the action would be successful. He remained quiet, and expected that such course would be taken as would secure him his rights; but he ascertained after the close of the last March term of the County Court, that an office judgment against him had become final - and upon enquiring into the cause, he ascertained that the engagement of the said Attorney, which had been made nearly a year before, had ~~been~~ been forgotten by him, and that he had not appeared at all in the case, and consequently nothing had been done in making an office judgment final. But it was then too late to do any thing, judgment having been entered against him for the said sum of \$2014 with legal interest from the 20th day of May 1832. Thus, by a series of unfortunate occurrences, and by no fault of your orator's, he is about to be deprived of the beneficial condition in his contract, and indeed a new contract is made for him, and when too he was ready to perform his said contract strictly and truly, and offered to do so, on the first demand, ~~and has~~ at all times since, and still is, ready to make payment ^{an execution has been issued upon the said judgment by which your orator's property is in danger of being laid upon.} in the manner he contracted to do. ^{inasmuch there-}fore, as the said proceedings are contrary to justice and equity, and your orator has no relief at common law, his prayer is, that the said John Horton, may be made a party dependant to this bill, and that they answer the same on oath, replying to its allegations as specially as if the same were put to them by way of interrogatory; that the

all further proceedings upon the said judgment and execution be enjoined, until the matters set forth in this bill can be enquired into; that, upon a full and final hearing of his case, your worship would perpetually enjoin the said judgment, and establish and decree the execution of the said judgment as actually made; and that such order may be extended to your orator as a case and ^{requires} ^{your worship} ^{to be} directed, &c.

P. B. Johnston, P. q.

Virginia, Lee County, to wit:

This day Charles H. Havelly personally appeared before me Benjamin Dickinson a Justice of the peace in & for the said County of Lee, and made oath, that the matters set forth in the foregoing bill as of his own knowledge are true, ^{stated as upon the information of others he} ^{believe} to be true. Given under my hand this day of June 1833.

Benjamin Dickinson

(P.)

Chs. H. Haveley

vs.

Bill - Injunction

John Horton

33

June Bill filed & Injt. awarded

July Rules continued

Augt. Defts. Horton & Co. filed

Sept. Cont. Oct. continued

Oct. 1st. Defts. & Injt. filed

Nov. 1st. Notice to dissolve

Dec. 1st. Dec. 1st. Set for hearing

1869. Jan. continued

Feb. continued

Mar. continued

Apr. 1st. Rules continued

To the Worshipful The Court of Lee County in Chancery
telling: The Answer of James Caldwell to the Bill of In-
junction filed against him and John Horton in this Court, by
Charles H. Hanely.

This Deft saying to himself the usual exceptions to said
Bill, for Answer thereto saith. That the Comptt owed ^{him} a note of
about \$60 dollars, as well as he now recollects, which was discharge-
able in Cabinet Work, as stated in Comptt's Bill. This sum
had been due from the Comptt to this Deft for many months
previous to the execution of the note, upon which the judgment
at law was obtained, as mentioned in said Bill. And this
Respondent had frequently demanded the furniture from
the Comptt, to discharge it, but the Comptt was never pre-
pared to pay him. — At length this Deft made a con-
tract with Genl. William for \$90. or \$100 dollars worth of
furniture, and induced him to take the Comptt's note for
the same, which he did. And then the Comptt and this Deft
came to an Agreement, by which the Comptt agreed to execute
a new note for Cash, due six months after date, for the balance
of the first note, which he did, without any understanding
whatsoever, within the recollection of this Deft, that the amount
thereof was to be taken in Cabinet work. And this Deft is
confirmed in his recollection of the matter, from the fact sta-
ted, that the last note was taken due six months after date,
which this Deft would not have agreed to, if he had verbally
agreed to take the same in Cabinet work, in exchange for
a note which had been a long time due, payable in the same
way, and on which, this Deft had a right to demand Cash,
as he had frequently applied for the Cabinet furniture, and
could not obtain it. This Deft is therefore confident that the
amount of the last note was to be paid in Cash, as the note
purported, and that there was, at the time of its execution,
no verbal understanding whatsoever, that the same should
be paid in Cabinet work. He therefore denies altogether
that allegation of the Bill. This Deft admits that he sold
the said note to the Deft Horton, as a Cash note, which

It was, really, and fairly.

This Deft relies upon the grounds taken in the Answer of his Co Deft Norton, in relation to the effect of a Verbal Contract, in setting aside a Deed, and of the ground taken in the Complaint Bill in relation to the negligence of Counsel. Neither of which, even if true, could prevent a recovery upon the said note. And having now fully answered said Bill, prays to be hence dismissed with his Costs.

Shamp for Deft.

See County Court.

This day James Caldwell came before the undersigned, a justice of the peace for said County, and made oath that the statements of the foregoing Answer, so far as they depend upon his own knowledge, are true, and so far as they depend upon the information of others he believes them to be true. Given under my hand this 8th day of November 1834.

Byron Dickinson

Baldwell

ad. Elmsworth

Hanley

Ans. Feb. 20th 1834

To the Honorable the Court of Lee County in Chancery Sitting,
The Answer of John Horton to the Bill of Injunction filed in this
Court against him and James Caldwell by Charles H. Haneley.

This Deft saying all manner of exceptions to said Bill, for answer
thereto, that he knows nothing of the contracts or agreements be-
tween the said p^t and the Deft Caldwell as set forth in the p^t's
Bill, and therefore does not admit that any such were made. He
knows nothing of a previous note executed by Haneley to Caldwell
or the terms of it, as mentioned in said ^{Bill}, and does not admit the
statement of the Bill in relation thereto. - He knows nothing of
the note on which he obtained the judgment at law, being taken
for the balance of an old abused note, and does not admit it.
And he knows nothing about the Compt's refusal to sign the last
note he gave because it was for money, nor of the verbal understand-
ing about the manner of its discharge and payment, as stated in
the p^t's Bill, and does not admit them to be true. On the contrary,
instead of admitting, he calls upon the Compt to make all of
his allegations good, by full and good proof.

Neither does he admit the statements of the p^t in his Bill
in relation to his employment of Counsel to defend the suit at
law, or the neglect of such Counsel. And he also calls for proof
of these allegations.

And now this Deft will state, that he is advised, that if
all of these statements were really true, that yet they are not
sufficient to afford him relief in equity, or to authorize this
Court to arrest the judgment at law obtained by this Deft against
the said Haneley. For he is advised that no verbal contract is
valid in law, to cancel or change a contract by deed. But if
this were even so, yet it would not apply to the case of an Assignee,
however it might operate against the Assignor. - The note on which the
judgment at law, was recovered with the Assignment thereon is herewith
referred to as part of this Answer. - The said note purports upon its

face, to be a note for Cash, and when an obligor executes such a note, with a secret verbal understanding that it is to be discharged in trade, he puts it in the power, and aids the obligee to practice a fraud upon the purchaser of such note, which would destroy his equity against him, even if equity could give relief against the obligee, on such a note, with such verbal understanding, which it will not.

Neither is there any ground for the interference of a Court of Chancery, as this Dept is advised, from the statements of said Bill, in relation to the employment of, and negligence of Counsel. It was the duty of the Compt. to be observant of his Counsel, and if it were even true that himself and his Counsel have been negligent; the effects of such negligence ought to fall upon themselves and not upon this Dept. - This Dept having now fully answered upon his part, prays to be hence dismissed with his Costs, and that he obtain a dissolution of the 1st Injunction & have the benefit of his judgment at Law.

But if this Dept should be mistaken as to the equity of this Case - He states that the said James Caldwell sold and assigned the said note to this Dept. as a Cash note for full value, and that if the Court shall give relief to the Compt. Hamley against a Cash recovery, that then your Honors will decree that the said Caldwell shall pay to this Dept the amount of the principal and interest of said note in Cash, together with his Costs at Law and in this Court, and that the latter part of this Answer may be considered as a Bill against the said Caldwell for that object, and that he may answer the same on oath as a Dept there to. And as in duty he.

Virginia, Lee County town.

This day John Horton personally appeared before the undersigned a Justice of the Peace in & for said County and made oath, that the statements of the foregoing answer, so far as they depend upon his own knowledge are true, and so far as they depend upon the information of others, he believes them to be true.

Given under my hand this 15th day of July 1833

Rezin Dickerson

John Horton

ads } Answer

Charles H. Havely

1833
August Rules filed

Lee County, to wit.

The affidavit of John Hamblen Taken at Lee Court House on the 22^d day of June 1853. To be read as evidence in an injunction in Chancery ^{in the County Court aforesaid} wherein Charles H. Harely is plaintiff and John Horton is defendant. This affiant saith that some time ago he was at the tavern of Daniel Jones in Jonesville in Company with Charles H. Harely and others when a man came in who I think was Mr John Horton and presented a note to Mr Harely for payment and asked for the money. Harely refused to pay the money until said it was not his contract to pay in money but in cabinet work. ~~which he~~ ~~was then ready to pay him, if he would go to his house and receive~~ which Horton refused to take, and threatened that he would sue and have the money and further this affiant saith not.

John Hamblen

Sworn to and subscribed this 22 June 1853

Benjamin Dickinson

The affidavit of Alexander W Mills Taken at Lee Court House on the 22^d day of June 1853. To be read as evidence in an injunction in Chancery in the County Court of Lee wherein Charles H. Harely is pl^t & John Horton defendant. This affiant saith that on the 20th day of February 1852 Mr James Caldwell & Mr Charles H. Harely requested ^{him} to make a calculation of what was the balance on a note Mr Caldwell then held on Harely, and found a balance due on the old note which was payable in cabinet or carpenters work, this affiant was then requested to write a new note for the balance which he did for just so much money, on reading over the note Harely refused to sign it, as it did not agree with their contract, which was for cabinet or carpenters work, this affiant said he thought it unnecessary, as they might make a verbal contract as to their agreement heretofore made when this affiant was called on to witness the verbal contract which was that the note was to be paid in work as aforesaid, and further this affiant said not.

Alexander W Mills

Sworn to and subscribed the day and date above

Benjamin Dickinson

Charles H. Hovey

75 } affidavits
John Horton aff'd

filed 21st June 1833

Pursuant to a notice duly given we the undersigned justices of the peace for Le County have this 18th day of March 1834 proceeded to take the deposition of James Miles and others in a suit now depending ^{in the County Court of Le County} between Charles H. Harely pth and John Horton & J. A. Caldwell defts. Alexander Russell, a witness for the plaintiff, of lawful age being duly sworn deponeth and saith, That he was present when Mr John Horton demanded the amount of a note ~~held on Charles H. Harely~~ ^{formerly expected to James Caldwell} and requested the payment in money, Harely refused to pay money but told Horton the furniture was ready agreed to the old note. and further this deponent saith not

Alexander Russell
and not having finished the deposition they are adjourned till Ten O'clock tomorrow, in the morning
18th. March 1834

(Danl Dickinson)

Benjamin Dickinson

Pursuant to the adjournment of yesterday we the undersigned justices of the peace for Le County have proceeded ^{this 20th day of March 1834} to take the deposition of James Miles for a witness called on by the plaintiff and of lawful age who being first duly sworn deponeth and saith

Question by pth. What amt of cabinet furniture had I on hand in the month of June 1832

Answer there was ~~at hand~~ ~~and~~ ~~at~~ in the whole of that month furniture on hand, to the value sixty or seventy dollars and further this deponent saith not

James Miles

Alexander W Miles, a witness called on by the plaintiff who being duly sworn deponeth and saith, That on the 20th day of February 1832 James Caldwell & Charles H. Harely requested him to make a calculation of what was the balance on a note Caldwell then held on Harely, and found a balance due on the old note of \$36.14 which was payable in Cabinet or Carpenters work and was requested to write a new note for the balance which he did, but omitted to state the Contract on the face of the note, by just note the note for so many dollars, on reading over the note Harely refused to sign it, as it did not set forth the Contract, which was for Cabinet or Carpenters work, this deponent said

It would be unnecessary to draw a new note by they could make a verbal contract, which would answer as well as the agreement they had made in his presence before the new note was drawn, the parties then stated their contract again which was that the note should be paid in Carpenters or Cabinet work, and further the deponent saith not

Alexander W. Mills

Adjourned 'till tomorrow morning 9 o'clock.

The deposition of A. W. Mills is excepted to on the grounds of his interest, he being the Comptroller's clerk in the action at law.

Shank for Defts.

Stephen T. Neill
Evans Peery

Thursday March 20th 1834. — Met this morning pursuant to adjournment on yesterday.

Peter C. Johnston, also a witness of lawful age, in behalf of the plff, being first duly sworn, deposes and saith: ^{he is an attorney at law practicing in the County Court of Lee County; that} That, a short time after the March Court of this County in 1833, the plff came to him, and asked him, if the office judgment against him at the suit of John Horton had been set aside? — the deponent informed him, that he had not done it, and that he had ^{not} recollected till the moment of that conversation that he had undertaken to attend to the case; the plff expressed regret at it, and said he had relied upon the deponent to do so. Upon this occasion it was, that the fact was brought to the deponent's recollection that some considerable time before, he had been consulted by the plff who stated substantially the facts set forth in the bill, and asked if they would constitute a defense against the said action — the deponent was of opinion, that if those facts were established by proof, they would be a good defense, and was engaged by the plff to attend to the cause for him and at the proper time to set aside the office judgment and set up that defense — so much, time, however, elapsed, before an office judgment was obtained, that, together with the hurry of business at the courts, it entirely escaped the deponent's recollection — the office judgment was not set aside by him, & consequently it became final. — And further the deponent saith not — written by the deponent himself and subscribed by him March 20th 1834.

Peter C. Johnston.

acting Justice of the Peace in Lee County
We, Evans Peery, and Stephen T. Neill, do certify, that the foregoing depositions in the case between Charles H. Havelly plff and John Horton and James Caldwell depts ~~were~~ taken before us on the ~~day~~, dated on the 19th and 20th days of March 1834 were taken before us on those days at the place appointed by the said notice and by adjournment from day to day. Given under our hands this 20th day of March 1834.

Stephen T. Neill
Evans Peery

Recd from the Com^r on
the 20th March 1834.
JWS. Morison DC

Deposition in Chancery
to J. St. Mary Esq. Master of the Court

\$6.17

One day after date I promise to pay
D. Kinson & Ransom or order Six Dollars and seventeen
cents for Value Co. Nov. 17th 1841

John P. Johnston

Geo. P. Johnston

Note

28 Ransom

\$617

apc 38
\$655

(232)

See County Court.

John Norton a squire of James Caldwell complains of Charles H. Nately Dept. in Custody &c. of a plea. That the Dept tendered to the pet. the sum of \$36.14 which to the pet he owes and from him unjustly detains. - For that the said Dept on the 20th day of February in the year 1832 at the County aforesaid, made his certain note in writing, sealed with his seal, and to the Court now here shown. The date whereof is on the same day and year aforesaid, whereby the Dept promised to pay to the said James Caldwell, three months after the date of the said note, the said sum of Thirty six dollars and fourteen Cents for value rec^d. - And afterwards, and before the payment of the said sum of money or any part thereof, by the Dept to the said James Caldwell, to-wit. on the 15th day of May in the year 1832 at the County aforesaid, he, the said James Caldwell, by his written endorsement on the back of the said note, his name being there to subscribed in his own proper hand writing, which is also to the Court here shown, the date whereof is on the same day and year last aforesaid, assigned the said note to the pet for value rec^d. of which the Dept, on the same day and year last aforesaid, at the County aforesaid, had notice.

By reason whereof, and by virtue of the Act of Assembly in that case made and provided, Right and action have accrued to the pet, to sue for and receive from the Dept. the said sum of money.

Yet the pet says. That the Dept. although by the said James Caldwell frequently requested, did not, at any time before receiving notice of the said assignment, pay to the said James Caldwell the said sum of money, or any part thereof, nor hath, the said Dept. although by the pet thereto frequently requested, paid to the pet, the said sum of money, or any part thereof, at any time since; but the same to the pet to pay, the Dept hath hitherto altogether refused, and still refuses, to the damage of the pet \$36. wherefore he sues &c.

Sharp for pet.

Horton A. Lee

in { Dec. 6

Hawley

note enclosed

1833

Long St. & H. Ord.

Feb. 6. ord. Conf.

62. 81

2. 50

5. 63

7. 50

\$6. 44

✓ lb

Three months after Date I will
pay James Caldwell \$25, 14/6
for value rec^d Writup my hand
and seal this 20th July 1832

Charles H. Howard

for Value Received I
assign the within note
To John Barton. This 15th
th of May 1832

James Caldwell

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF *Lee*

COUNTY, GREETING:

WE COMMAND YOU

to take Charles H. Hovely

if *he* be found within your bailiwick, and *him* safely keep so that you have *him* before
our Justices of our Court of our said County, at the Court-House, on the *30th* Monday in August
next to answer *John Horton assignee of James Caldwell of*
a plea of Debt for \$35.14 Damages \$36.

And have then there this writ.

WITNESS, *Alex^r W. Nicols*

Clerk of our said Court, at the Court-House, this *17th* day

of *July*

1832 in the

5th

year of the Commonwealth.

W. S. Morrison DC

This is an action of Debt and Note under Seal for
Money, Bail Liquid

Sharf for Dth

John Horton apx

U³ Lapias
C H Havelly

August 1832

Exceute August
4th 1832

W Mills
3 special balls
L and L Dickinson
D.F.

for
L and L Dickinson
S. L. C

Memorandum that upon the 1st day of August 1832
Alexander W Mills personally appeared before me Daniel
S Dickinson Deputy for Daniel Dickinson Sheriff
Lee County and undertook for Charles A
Havelly at the suit of John Norton assignee
of James Colquhoun in an action of debt
~~for~~ now depending in the County Court of Lee
County that in case the said Charles A Havelly
shall be cast in the said suit &c the said
Charles A Havelly will pay & satisfy the condem-
nation of the Court or render his body to prison
in execution for the same or that he the said
Alexander W Mills will do it for him given under
my hand this the 1st day of August 1832

I have Acknowledged the above Recognisance of Bail
and in testimony thereof have here unto affixed
my hand and seal this 1st day of August 1832
A W Mills Seal

THE COMMONWEALTH OF VIRGINIA to the sheriff of *Lee*
county greeting. We command you to summon *John Horton & James*
Soldwell

to appear before the justices of our Court of Lee County at the Court House, on
the third Monday in *July next* to answer a bill ^{*of injunction*} in chancery exhibited
against *them* by *Charles H. Havelly*

and unless *they* shall answer the bill within four months thereafter the Court
will take the same for confessed, and decree accordingly. And this *they* shall
in no wise omit under the penalty of one hundred pounds ^{*each*}. And have then there
this writ. Witness ALEXANDER W. MILLS, Clerk of our said Court, at the Court
House, the *24th* day *June* 1833 in the *5th* year of the Commonwealth.

JWS, Morrison Cl

To enjoin the Defendants their agents, attorneys & all others
 concerned, from further proceeding on an Exce, now in
 the hands of the Sheriff of Lee County, in favour of John
 Horton assignee of James Caldwell against Charles H.
 Hooley until the further order of this court. The Said
 Hooley having filed with the clerk of this Court a bill
 of errors. And Executed Bond according to law.

Teste JWS. Morison DC

Charles H. Hooley

VS } Sp. Chancery

J. Horton & Caldwell

July 1833

Executed

J. H. McKeen Dr

for

Paul DeKewson S. C.

Messrs John Norton and James Caldwell

Take notice that on
the 2nd day the next march court to be holden for Lee
county, at the tavern of Daniel D. Jones in Jonesville
in S. D. county I shall proceed to take the depositions of
James Miles Esq. and others, to be read as evidence in
a suit in chancery now pending in the county
Court of Lee county, wherein I am plaintiff
and you are defendants. and continue from
day to day until completed.

C. Hardy
May 21st 1834

I acknowledge legal service
of the within notice 6th February 1834
James Caldwell

I acknowledge legal service of
the within notice 25th February
1834

John Horton

W. A. Dancy
vs
Notice
John & Caldwell

I do hereby release all errors at law, in an action
in the County Court of Lee, on the common law side
thereof, brought against me by John Horton assignee of
James Lealdwell, and ~~upon~~ⁱⁿ which judgment was rendered
against me at the Quarterly term of said Court held
in March 1831.

Charles H. Havely.

Nately

in } Release of
 } Errors.

Horton

Know all men by these presents, That we Charles H. Hovey

are held and firmly bound unto John Horton assignee of James
Baldwell

in the sum of Seventy five dollars

to which payment well and truly to be made to the said John Horton
assignee of James Baldwin his
heirs, executors, administrators or assigns, we bind ourselves, and every of us, our
and every of our heirs, executors or administrators, jointly and severally firmly by
these presents. Witness our hands and seals this 19th day of June

1833.

The Condition of the above obligation is such, that whereas the above bound
Charles H. Hovey hath this day obtained from the
County Court of Lee in Chancery sitting an injunction
to Stay all further proceedings upon a judgment rendered
on the 20th day of March 1833 by the County Court of
Said County
against the Said Charles H. Hovey

for the sum of Thirty Six dollars and fourteen cents with
interest thereon after the date of S. P. C. S. from the 20th day of
May 1832 till paid and the costs of the said suit.

Now if the said Charles H. Hovey
shall satisfy and pay all such sums of money and tobacco and costs, which are now
due or shall become due to the said John Horton assignee of James Baldwin
in the said judgment, and also shall pay all such costs and damages as shall be
awarded against him in case the injunction aforesaid shall be dissolv-
ed, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered }
in presence of

C. H. Hovey
J. W. S. Morison

Charles H. Howell

VS } Injunction Bond
John Horton assignee
1833
Duns Bond Executed